

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PAUL BOSCHETTI,

No. C 13-2706 CW

Plaintiff,

ORDER GRANTING IN  
PART LEAVE TO  
APPEAL IN FORMA  
PAUPERIS

v.

DANIEL O'BLENIS,

Defendant.

Defendant Daniel Everett, named herein as Daniel O'Blenis, moves for leave to appeal in forma pauperis (IFP). For the reasons set forth below, this motion is granted in part.

"[A] party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court." Fed. R. App. P. 24(a)(1). "An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). "If the district court denies the motion, it must state its reasons in writing." Fed. R. App. P. 24(a)(2).

Defendant seeks to appeal this Court's August 14, 2013 order remanding the case to San Francisco County Superior Court for lack of federal subject matter jurisdiction and awarding attorneys' fees to Plaintiff Paul Boschetti. See Docket No. 26, Notice of Appeal. In this circuit, an order remanding a case to state court for lack of federal subject matter jurisdiction "is not reviewable on appeal or otherwise." 28 U.S.C. § 1447(d); see also Abada v. Charles Schwab & Co., Inc., 300 F.3d 1112, 1116 (9th Cir. 2002) ("Remand orders based on a defect in removal procedure or lack of

1 subject matter jurisdiction are immune from review even if the  
2 district court's order is erroneous.'" (citations omitted)).  
3 Accordingly, Defendant's appeal of the remand order is frivolous  
4 and not taken in good faith under 28 U.S.C. § 1915(a)(3). See  
5 Hooker v. American Airlines, 302 F.3d 1091, 1092 (9th Cir. 2002)  
6 (construing "not in good faith" to mean frivolous).

7 However, Defendant's appeal of the attorneys' fees award is  
8 not frivolous. The Ninth Circuit has held that such an award is  
9 subject to appellate review even when the accompanying remand  
10 order is not. Dahl v. Rosenfeld, 316 F.3d 1074, 1079 (9th Cir.  
11 2003) ("Although we have no power to reverse the remand decision,  
12 we can nonetheless consider the district court's award of  
13 attorneys' fees."). Thus, Defendant may proceed IFP in his appeal  
14 of the attorneys' fees award.

15 CONCLUSION

16 For the reasons set forth above, Defendant's motion for leave  
17 to appeal IFP (Docket Nos. 27, 29) is GRANTED in part. Pursuant  
18 to Federal Rule of Appellate Procedure 24(a)(4), the Clerk shall  
19 notify the Ninth Circuit that this Court has denied Defendant's  
20 motion to appeal the remand order IFP and certified in writing  
21 that the appeal (9th Cir. Case No. 13-16666) is not taken in good  
22 faith. Defendant may, however, proceed IFP on his appeal of the  
23 attorneys' fees award.

24 IT IS SO ORDERED.

25  
26 Dated: 8/26/2013

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28  
  
CLAUDIA WILKEN  
United States District Judge